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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,861	03/07/2001	Martin W. McKinnon III	10263-33246	5613

26702 7590 07/06/2004

MORRIS, MANNING & MARTIN LLP  
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EXAMINER

PEIKARI, BEHZAD

ART UNIT	PAPER NUMBER
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2186

DATE MAILED: 07/06/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/800,861

**Applicant(s)**

MCKINNON ET AL.

**Examiner**

B. James Peikari

**Art Unit**

2186

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2001.  
2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.  
    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-70 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 07 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) ☐ All    b) ☐ Some \* c) ☐ None of:  
        1. ☐ Certified copies of the priority documents have been received.  
        2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2, 3</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because:

(a) Several of the drawings are not in accordance with 37 CFR 1.84(p)(3) because the font size is too small.

(b) "15A", "15B", "16A", "16B" should replace "15a", "15b", "16a", "16b", respectively, in accordance with 37 CFR 1.84(u)(1).

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The specification is objected to because it must be amended to include the view numbers "15A", "15B", "16A", "16B", as discussed above.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-70 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Majeti et al., EP 0 742 658 A2.

Majeti et al. describe a carrier network that serves as a cable distribution system that flexibly transmits data over "a common media ...such as ... cable, optical fiber or even free space", thus including the common data-over-cable standard within its scope. Majeti et al. further teaches at least an "Intermediate Network" as a local network (note column 2, lines 33 et seq.) The Majeti et al. system monitors bandwidth from a plurality of users over a period of time and uses the information gathered to determine a future bandwidth allocation.

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As for the use of coaxial cable, note coaxial cable 110. As for the connectivity of equipment, note Figure 2. The Majeti systems further maintains QOS standards, as claimed. Note column 6, lines 56-57 and column 7, line 10. As for providing internet access through the network, note column 3, lines 17-19. As for the claimed times for monitoring, the Majeti et al. system is dynamic and based on requests, so each of the claimed time periods falls within the scope of the Majeti et al. system.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Peikari whose telephone number is (703) 305-3824. The examiner is generally available between 8:00 am and 9:30 pm, EST, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Kim, can be reached at (703) 305-3821.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

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Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 746-7239 (Official communications)

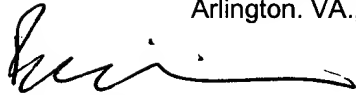
or:

(703) 746-7240 (for Informal or Draft communications)

or:

(703) 746-7238 (for After-Final communications)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor (Receptionist).



B. James Peikari  
Primary Examiner  
Art Unit 2186

6/28/04